SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 389

FRANK WALTERS AND EDWARD WILLIAMS, JR.,
Appellants,

vs.

THE CITY OF ST. LOUIS, JOSEPH M. DARST, MAYOR, AND DEL L. BANNISTER, COLLECTOR,
Respondents

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

STATEMENT AS TO JURISDICTION

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IN THE SUPREME COURT OF MISSOURI

No. 43,648

FRANK WALTERS AND EDWARD WILLIAMS, JR.,
Appellants,

vs.

THE CITY OF ST. LOUIS, JOSEPH M. DARST, MAYOR, AND DEL L. BANNISTER, COLLECTOR,
Respondents

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, plaintiffs-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the Supreme Court of Missouri entered in this cause.

Opinion Below

The opinion of the Supreme Court of Missouri is reported at 259 S. W. 2d 377; a copy of the opinion and judgment is attached hereto as Appendix "A".

Jurisdiction

The final judgment of the Supreme Court of Missouri was entered on July 13, 1953. A petition for appeal is presented the Supreme Court of Missouri herewith on September 3, 1953. The suit is one to declare unconstitutional a statute of the State of Missouri and an ordinance of the City of St. Louis whereby a so-called earning tax is levied upon appellants and to enjoin the enforcement of said statute

and ordinance by appellees. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case; *King Manufacturing Co.* v. *City Council of Augusta,* 277 U. S. 100; *Jamison* v. *Texas,* 318 U. S. 413; *Independent Warehouse, Inc.* v. *Scheele,* 331 U. S. 70.

The federal questions to be reviewed were raised in the court of first instance in plaintiffs-appellants' first pleading wherein the unconstitutionality of the statute and ordinance (by which said earnings tax is sought to be levied) was alleged on the grounds that they were in violation of the due process and equal protection of the laws requirements of the Fourteenth Amendment to the Constitution of the United States. These questions were preserved for appellate review in the state court in appellants' motion for a new trial which was overruled in the trial court and were specified and briefed as assignments of error before the Supreme Court of Missouri. In Paragraphs (11) and (15) of appellants' petition, the allegations are made that said House Bill No. 50 and Ordinance are arbitrary, unreasonable, discriminatory, vague and uncertain and in violation of the due process clause and equal protection of the laws requirements of the Fourteenth Amendment. These allegations were denied by appellees in their joint answer and were ruled adversely to appellants by the trial court in its decree of February 5, 1953. Furthermore, such rulings by the trial court were specified as error by appellants in Paragraphs (2) and (5) of their motion for new trial and were briefed and argued before the Supreme Court of Missouri. The opinion of the Supreme Court (which is attached hereto as Appendix "A") considered the federal questions originally presented in appellants' petition and preserved in their Motion For New Trial. With respect to the question

of the violation of appellants' equal protection of the laws by virtue of an arbitrary and discriminatory classification whereby wage-earners are taxed on gross income or gross receipts without deduction for taxes or operating expenses and self-employed persons are taxed on a "net profits" measure with taxes and operating expenses allowed as deductions, the Supreme Court of Missouri found no violation of the Fourteenth Amendment on the authority of *Madden* v. *Commonwealth of Kentucky*, 309 U. S. 83 that the Fourteenth Amendment was not intended to compel the states to adopt an iron rule of equal taxation. In answer to appellants' charge that the term "net profits", defined in the ordinance as "the net income . . . remaining after deducting the necessary expenses of operations from the gross profits or earnings", is indefinite, vague, and uncertain, the Supreme Court of Missouri ruled that the meaning was clear and definite, although it conceded that what constitutes "necessary expenses of operation" makes the definition uncertain and vexing and it concluded that the problem should be left to whatever changes might occur in the common understanding of the concept "net profits" as accepted methods of accounting change. Therefore, it found no denial of due process under the Fourteenth Amendment.

In answer to appellants' charge that the earnings tax Ordinance 46222 was unconstitutional and violative of equal protection by virtue of a discriminatory administration against appellants-wage earners, the Missouri Supreme Court ruled adversely to appellants. As pointed out above, at the earliest opportunity in appellants' initial pleading it was alleged that the Ordinance was violative of the equal protection clause of the Fourteenth Amendment. It was also pleaded that the Ordinance empowered the Collector of the City of St. Louis to promulgate rules and regulations for the administration of the tax and that the appellees were seeking to enforce said Ordinance against appellants

by taking into possession funds withheld by their employer; in their prayer appellants asked that appellees be restrained from enforcing said Ordinance. Appellants' original pleading was filed on September 12, 1952 in the Circuit Court of the City of St. Louis, Missouri. In the *Agreed Statement of Facts,* Paragraph Three thereof, it was stipulated by the parties that some two weeks prior to the filing of this cause the appellee Del L. Bannister, Collector of the City of St. Louis, had on the day after the passage of the Ordinance—August 28, 1952—issued certain administrative and interpretative regulations pursuant to Section Nine thereof. A copy of said Ordinance and regulations was marked Exhibit "A" and incorporated by reference into the record. It was also stipulated that it was pursuant to said Ordinance (Exhibit "A") that the appellees claimed the funds withheld from appellants' wages. In Regulation 2 of Exhibit "A", issued pursuant to Section Nine of the Ordinance, the "necessary expenses" which the Ordinance permits self-employed persons to deduct in computing their "net profits" was defined as including: (1) all necessary and ordinary business expense; (2) all losses sustained in said business, including depreciation; (3) worthless debts arising from said business; (4) all taxes paid which were imposed by authority of the United States or any state, county, school districts, or municipality; (5) all interest paid on taxpayer's indebtedness; and (6) charitable contributions not in excess of 5% of the net income. It was on the basis of the administrative bestowal of great tax advantages upon taxpayers who operate their own businesses that the charge was made that the Ordinance violates the "equal protection" clause. The argument was made both in the trial court and in the Supreme Court of Missouri that, even if the Ordinance was valid on its face, it became unconstitutional by virtue of a discriminatory administra-

tion. Although the individual wage earner, compensated by a fixed salary, incurs expenses in connection with his job, pays federal and local taxes, makes charitable contributions, and incurs interest, he is allowed no deductions therefor; on the other hand, the self-employed person is permitted all such deductions whether business-connected or personal. In ruling on this phase of appellants' charge, the Supreme Court of Missouri ruled that the regulations complained of were not to be treated as part and parcel of the Ordinance; if they were to be so treated, the Court said the Ordinance would become void whenever a Collector promulgated a discriminatory regulation. The Court concluded that it would be wholly unreasonable to declare unconstitutional an ordinance because an administrative agency promulgated a discriminatory rule in attempting to enforce it. As an alternate ground for ruling against appellants' on the discriminatory administration of the Ordinance, the Court ruled that the question of whether the regulations were discriminatory was not before the Court. It wrote that the action does not seek to have the Ordinance declared unconstitutional because of any administrative or enforcemental rule adopted. It also found that the incorporation of the Ordinance and Regulations into the record and the recital that the funds of appellant's were being withheld pursuant thereto could not inject this issue into the case.

Questions Presented

1) Where an enabling act of the Missouri General Assembly (House Bill No. 50) and an ordinance of the City of St. Louis passed pursuant thereto (Ordinance 46222) classify taxpayers so that gross income is taxed to wage-earners and "net profits" (net income after operating

expenses, including income taxes) is taxed to self-employed persons, are such statute and Ordinance unconstitutional by virtue of an arbitrary and unreasonable classification and violative of the due process and equal protection of the laws requirements of the Fourteenth Amendment to the Constitution of the United States?

2) Where an ordinance taxing earnings defines the "net profits" to be taxed to self-employed persons as "net income . . . after deducting the *necessary expenses of operating* from the gross profits or earnings", is such definition so vague and uncertain as to render said Ordinance unconstitutional and violative of the due process requirements of the Fourteenth Amendment to the Constitution of the United States?

3) Where an administrative officer promulgates a discriminatory regulation to a taxing Ordinance and seeks to enforce said Ordinance under said discriminatory regulation, does the Ordinance itself thereby become void and constitutionally violative of the equal protection of the laws requirements of the Fourteenth Amendment?

4) Where there is an allegation that a taxing Ordinance violates the equal protection of the laws requirements of the Fourteenth Amendment and there is evidence in the record of the intentional and discriminatory administration of said Ordinance against certain taxpayers, can the Supreme Court of any state foreclose review by the United States Supreme Court of said federal question of denial of equal protection of the laws and so defeat the taxpayer's claim of federal right by an *ad hoc* application of its own rules of procedure.

Statutes Involved

House Bill No. 50, now Sections 92.110-92.200 R. S. Mo. 1949 V. A. M. S. and Ordinance No. 46222 and Regulation 2 thereof are set forth in Appendix "B" hereto.

Statement

Appellants Frank Walters and Edward Williams, Jr. are both employed as truck drivers by the Shapleigh Hardware Company whose principal place of business is in St. Louis, Missouri. They work on an hourly rate and their gross wages, less federal withholding and social security, are paid to them on an hourly basis. By virtue of an enabling act of the Missouri General Assembly, referred to as House Bill No. 50 and now known as Sections 92.110-92.200 R. S. Mo. 1949 V. A. M. S., the Board of Aldermen of the City of St. Louis passed a so-called earnings tax ordinance, now known as Ordinance 46222, whereby a tax is levied upon the gross wages of appellants. It is under this Ordinance enacted on August 27, 1952 and Regulations promulgated by appellee Bannister that the appellees make claim to certain funds withheld by Shapleigh Hardware from the wages of appellants. By the terms of the earnings tax ordinance, enacted consistent with said enabling act, a tax of one-half of one per cent is imposed on the gross salaries and compensation of all wage earners; it also taxes to the extent of one-half of one per cent the net profits of businesses and associations. Section One of the ordinance defines net profits as "the net income of any association, business or corporation remaining after deducting the necessary expenses of operating from the gross profits or earnings". The words "necessary expenses of operating" is nowhere defined in the ordinance, nor is it stated whether state and federal income taxes are to be considered as "necessary expenses of operating". Pursuant to Section Nine of said ordinance, appellee Bannister in his official capacity promulgated Regulation 2 (see Appendix "B") listing "necessary expenses of operating" as including: (1) all necessary and ordinary business expense; (2) all losses sustained in said business, including depreciation; (3) worthless debts aris-

ing from said business; (4) all taxes paid which were imposed by authority of the United States or any state, county, school districts, or municipality; (5) all interest paid on taxpayer's indebtedness; and (6) charitable contributions not in excess of 5 per cent of the net income. This Regulation was promulgated on August 28, 1952, about three days before the tax levy became effective and was noted as "approved" in copies of the regulations issued to taxpayers. On September 12, 1952—less than two weeks after the effective date of this ordinance—appellants filed this action alleging, among other grounds, that the oridnance was violative of the due process and equal protection of the laws requirements of the Fourteenth Amendment to the Constitution of the United States as being arbitrary, discriminatory and oppressive in certain respects and vague and uncertain in others. These questions were ruled adversely to appellants by Division No. 2 of the Circuit Court of the City of St. Louis in its decree on February 5, 1953. After having preserved these questions for appeal to the Supreme Court of Missouri, appellants' allegations concerning due process and equal protection were denied by the Supreme Court of Missouri in its opinion of June 8, 1953 and denial of appellants' motion for rehearing on July 13, 1953. The Court found that the term "net profits" as defined was not vague and uncertain; it also found that the classification whereby wage-earners were taxed on gross earnings and self-employed persons on "net profits" was not arbitrary and discriminatory. The Court also held that any discriminatory regulations could not invalidate the entire ordinance as a violation of the equal protection of the laws requirements of the Fourteenth Amendment; finally, after having ruled on the discriminatory effect of the regulations, it decided that the question was not properly before it anyhow.

The Questions Are Substantial

The issues involved in this appeal are substantial and are of importance in determining the constitutional limits of the new municipal income taxes. For reasons not germane to this appeal our municipalities have found themselves in so-called financial straits and have proceeded to enact a new type of tax—the municipal income tax. As the cost of living has increased so has the cost of government, and it is the verdict of municipal authorities that the traditional taxes cannot meet the rising tide in cost of municipal government. With Ohio and Pennsylvania cities as pioneers in the field, the municipal income tax is spreading and its adoption is being urged in many other areas as the answer to the problem. As the municipal income tax is enacted in each particular city, it is adapted to the particular economic and legal situation depending upon the financial need and the requisite sanction—whether by constitutional provision or enabling act. Changes are made, but common to the taxing scheme is the classification between the wage-earner and the self-employed person. Gross earnings are taxed to the former while "net profits" are taxed to the latter. The definition of the term "net profits" is generally regarded as equivalent to "net income" for federal income tax purposes with no deduction for income taxes. In House Bill No. 50 and Ordinance 46222, however, here under consideration, the prohibition against deduction for income taxes is omitted. Thus, it becomes of paramount importance to the future extension of municipal income taxes to determine:

a) whether or not a classification taxing gross earnings to wage-earners and net profits to self-employed persons (permitting no deduction for income taxes) is discriminatory and violative of the Fourteenth Amendment, and

b) whether or not such a classification which permits self-employed persons to deduct income taxes as a "neces-

sary expense of operating'' is discriminatory and violative of the Fourteenth Amendment.

The first question has been resolved in favor of constitutionality by the highest courts of two states in *City of Louisville* v. *Sebree*, 308 Ky. 420, 214 S. W. 2d 248 and *Dole* v. *City of Philadelphia*, 337 Pa. 375, 11 A. 2d 163. The question is a federal one and should be determined by this Court as the final arbiter in matters of federal constitutional law. The second question likewise is a federal one and crucial to municipalities who will pattern their income tax after the St. Louis tax. Similarly, this will be a significant and far-reaching decision insofar as appellants' attack on the vagueness and uncertainty of the term ''net profits'' is concerned. Can the term ''necessary expenses of operating'' withstand the test of certainty demanded by the due process clause of the Fourteenth Amendment? Is it sufficient to say that it shall mean whatever accepted methods of accounting say it shall mean, and that it shall change as accepted methods of accounting change? Likewise, insofar as the alleged effect of the Collector's discriminatory regulation is concerned this decision will be of importance to municipal authorities everywhere who face the problem of administering a tax on income where it is sought to deny deductions generally for purposes of simplifying administrative problems and yet at the same time to preserve deductions for so-called ''necessary expenses of operating'' for the entrepreneur.

1. The definition of the term net profits in Ordinance 46222 results in a discriminatory classification between appellants and self-employed persons. ''Net profits'' is defined as the ''net income . . . after deducting the necessary expenses of operating from the gross profits or earnings''. Income taxes are universally considered operating expenses in accounting procedure and are therefore deductible in determining ''net profits'' as defined in the

Ordinance. This means that the self-employed person by the terms of the Ordinance is permitted to deduct income taxes—federal, state and local—while the wage-earner cannot deduct his income taxes. And this is the purport of the ordinance without any regard for the Collector's Regulations. Such a classification, it is submitted, is so arbitrary as to violate the equal protection of the laws of appellants as members of their class. It is true that the highest state courts in Kentucky and Pennsylvania have considered a similar argument in connection with earnings tax ordinances of Louisville and Philadelphia. In those ordinances the term "net profits" was defined as "the net income . . . after provision for all costs and expenses incurred . . ., shall be the same as reported for federal income tax purposes . . . but *without deduction of taxes based on income.*" In *City of Louisville* v. *Sebree*, 308 Ky. 420, 214 S. W. 2d 248 and *Dole* v. *City of Philadelphia*, 337 Pa. 375, 11 A. 2d 163, both ordinances explicitly made income taxes non-deductible and in the *Sebree* case the point was made in particular that no discrimination existed because no deduction was allowed anyone for personal income taxes. It is just the allowance of such a deduction in Ordinance 46222 as a "necessary expense of operating" which makes that ordinance's classification discriminatory by its terms and without regard to the Regulations. Therefore, it is submitted that the situation presented is one of unreasonable classification within the rule of *Quaker City Cab Company* v. *Commonwealth of Pennsylvania*, 277 U. S. 389, 48 Sup. Ct. 553, 72 L. Ed. 927 and indefensible as an exercise of legislative discretion under the rule of *Madden* v. *Commonwealth of Kentucky*, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590. There can be no reason related to the legitimate ends of the taxing ordinance for allowing self-employed persons to deduct income taxes—state, federal, and local—as necessary operating expenses and denying these same deductions to wage-

earners. Payment of income taxes is as necessary an expense to the employed truck driver (i. e. appellants) as to the self-employed hauler; in both cases one must pay his income taxes in order to insure his continued ability to remain free to earn. Where a deduction for income taxes is allowed to a self-employed person it cannot be said that his "net profits" after deducting taxes as a necessary expense are roughly equal to the wage-earner's gross earnings. Similarly, the deduction of income taxes aside, it would seem that there are other expenses as necessary to a wage earner's business (i. e. work clothes, tools, union dues) as are normal operating expenses to his employer's business. Exact equality between taxpayers is not expected nor can it be attained; however, a rough equity is possible where, as in the federal tax law, a standard deduction or an itemization of such miscellaneous necessary expenses is permitted the wage-earner.

2. By the use in the formula for determining "net profits" of the term "necessary expenses of operation", it is submitted that the statutory meaning of "net profits" is thereby rendered vague, indefinite and uncertain. What are operating expenses as contrasted with non-operating expenses is a matter on which there is not even complete agreement between accountants; in many areas there is complete accord; however, in others, such as the classification of charitable contributions the answer will depend more on the accountant's training and background than on any accepted principle of accounting. This uncertainty was recognized by the Supreme Court of Missouri when it admitted that the meaning of the phrase "necessary expenses of operation" is a vexing problem and that the concept of its meaning changes from time to time as accepted methods of accounting change. It is such indefiniteness that appellants are unwilling to accept and submit is sufficient warrant for holding said ordinance void. Assuming, as the

Supreme Court of Missouri does, that the concept of its meaning will change from time to time as accepted methods of accounting change, how shall taxpayers in the future determine when an accepted method of accounting has changed? Shall it be considered accepted when taxpayer's accountant changes his concept? Or must it be accepted by the Journal of Accountancy? It seems that appellants are not alone in discerning such obvious vagueness, for, pursuant to Section Nine of the Ordinance, the Collector issued Regulation 2 setting forth an interpretation of the phrase by which taxpayers are to be guided. Aside from the discriminatory effect of the Regulation which will be discussed later, appellants submit that such Regulation which is part of the record as Exhibit "A" is proof enough of the alleged indefiniteness; it is an interpretative Regulation, authorized by the Ordinance itself, wherein it is sought to make certain and definite that which is uncertain and indefinite. If the vague and indefinite meaning of the phrase "necessary expenses of operation" is not to render the Ordinance void, it must be saved by Regulation 2. It would seem a clear abandonment of the City Council's legislative function to hold, as the Supreme Court of Missouri has, that the ultimate meaning is to be subject to the vagaries of accounting theory and accountants who will determine from time to time what changes become accepted.

3. The discriminatory administration of the Ordinance under the Regulation is amply shown in the record and renders the Ordinance void in violation of the "equal protection" clause of the Fourteenth Amendment to the Constitution of the United States. Regulation 2 is part of Exhibit "A" found in the record. This Regulation is indefensible as a fair one under which the earnings tax is collected and administered; it goes further even than the Ordinance itself where the discrimination is at least confined to income taxes and the other "necessary expenses of operation." Regulation 2 permits the deduction of expenses by

the self-employed taxpayer in computing his "net profits" of non-business expenses, such as *all* interest paid and *all* charitable contributions. To illustrate this inequality, compare the tax liability of plaintiffs with self-employed truck drivers having the same annual gross income as plaintiffs. The self-employed truck driver, in computing his taxable income, can deduct any ordinary and necessary business expenses, but the employed truck driver can deduct none of his ordinary and necessary business expenses, such as union dues, chauffeur's license, and cost of work clothes. The self-employed truck driver can deduct federal and state income taxes, the very earnings tax which he is paying, and all property taxes, real or personal; the deductibility of these taxes is not based on any relationship to the self-employed taxpayers' business, being proper deductions even if *personal taxes.* The employed truck driver can deduct no taxes under any circumstances. Similarly the self-employed taxpayer can deduct all interest paid on indebtedness and charitable contributions not in excess of 5% of his net income; these items are deductible even though *non-business* and *purely personal.* But the employed truck driver can deduct no interest of any kind and no charitable deductions. Such a Regulation under which the Ordinance is being administered can only be an intentional and systematic discrimination against appellants and wages earners generally which renders the Ordinance void and unconstitutional under the rule of *Yick Wo* v. *Hopkins,* 118 U. S. 356, 30 L. Ed. 220, 6 Sup. Ct. 1064.

In appellants' initial pleading by which this cause was instituted it was alleged that Ordinance 46222 was arbitrary, unreasonable, and discriminatory and in violation of the equal protection of the laws requirements of the Fourteenth Amendment. It was stipulated that the funds withheld from appellants' wages by their employer were being claimed by appellees by virtue of the Ordinance and Regulations. The Supreme Court of Missouri first concluded

that even if the Regulations were discriminatory, it would be unreasonable to declare the Ordinance unconstitutional because an administrative officer issued a discriminatory rule and attempted to enforce the ordinance under such discriminatory rule. In this respect appellants contend that the Court has overlooked the rule of *Yick Wo* v. *Hopkins, supra,* where the Supreme Court of the United States did not think it unreasonable to declare unconstitutional an ordinance which, though valid on its face, was being administered in an arbitrary manner. As an alternative ground for ruling against appellants, although it had already considered and ruled on the specific issue the Supreme Court of Missouri held that the discriminatory administration was not properly before it because not pleaded; it thought that, even though the Regulations were before it as part of the record, the question of their legal effect was a foreign issue. Appellants submit that whether or not they have been denied equal protection of the laws is a federal question from a consideration of which this Court can not be foreclosed. A federal right cannot be defeated by so-called local practice. The Supreme Court of the United States need not accept as final a state court's interpretation of allegations in a complaint asserting it, *Brown* v. *Western Ry.*, 338 U. S. 294, 70 S. Ct. 105, 94 L. Ed.

It is submitted that the decision of the Supreme Court of Missouri fails to apply properly the guarantees of equal protection of the laws and due process afforded by the Fourteenth Amendment. We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

STANLEY M. ROSENBLUM,
HARRY H. CRAIG,
A. CLIFFORD JONES,
Counsel for Appellants.

APPENDIX "A"

IN THE SUPREME COURT OF MISSOURI
COURT EN BANC

APRIL SESSION, 1953

No. 43,648*

FRANK WALTERS and EDWARD WILLIAMS, JR., Appellants,

vs.

CITY OF ST. LOUIS, a Municipal Corporation; JOSEPH M. DARST, Mayor of the City of St. Louis; and DEL L. BANNISTER, Collector of the City of St. Louis, Missouri, and Director of the Collection Division of the Department of Finance of the City of St. Louis, Missouri, Respondents.

Appeal from the Circuit Court of the City of St. Louis

Division No. 2

Honorable WILLIAM B. FLYNN, Judge

This action involves the constitutionality of Ordinance No. 46,222 of the City of St. Louis, commonly called and herein referred to as the "earnings tax" ordinance. The trial court upheld its constitutionality and plaintiffs appealed.

Appellants, one a resident of the City and the other a resident of St. Louis County, are wage compensated employees of the Shapleigh Hardware Company, a corporation domiciled and doing business in the City. Since the enactment of the ordinance and pursuant to its provisions, the employer has withheld and unless the ordinance is declared invalid will continue to withhold from their wages as they accrue one-half of one per centum thereof for disbursement to the City in discharge of the tax levied upon their wages under said ordinance. The petition, which names the City, its Mayor, its Collector, and Shapleigh Hardware Company as defendants, prays a judgment declaring the ordinance void, declaring the act of the Legis-

lature which authorized its enactment void, and enjoining the defendants from carrying the ordinance into effect. It appearing to the trial court after submission that no issue was presented as to Shapleigh Hardware Company, it was conditionally dismissed from the action.

The grounds upon which plaintiffs sought judgment declaring the ordinance void and upon which they assign error of the trial court in refusing to so hold are:

(1) The enabling act of the 66th General Assembly upon which the ordinance is predicated, to wit: House Substitute for House Bill No. 50, now §§ 92.110-92.200 RSMo 1949 V. A. M. S., is violative of the following provisions of the Constitution of Missouri:

(a) Article III, § 40, prohibiting the enactment of local or special laws in the instances set forth in clauses (21) and (30) thereof;

(b) Article X, § 11(f), authorizing enactment of general laws permitting a county or other political subdivision to levy taxes other than those ad valorem; and

(c) Said House Bill No. 50 was not enacted in compliance with Article III, § 22, requiring each committee of the House and Senate to which a bill is referred to keep a record of its proceedings and report the vote of its members to be filed with all reports thereon.

(2) The ordinance and said House Bill No. 50 are arbitrary, unreasonable, discriminatory, vague and therefore violative of the due process clause of the Constitution of Missouri, to wit: Article I, § 10; of the due process and equal protection clauses of the Constitution of the United States, to wit: the Fourteenth Amendment thereof; and of Article X, § 3, of the Constitution of Missouri, requiring that taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and shall be levied and collected by general laws.

On the 19th day of May, 1950, the Board of Aldermen of the City of St. Louis adopted a resolution stating in part:

"We * * * do hereby take official recognition of the impending financial crisis confronting the City of St. Louis.

"Whereas, the cost of government in the City of St. Louis has increased from approximately $20,000,000 to $40,000,000

in the last ten years, and the ordinary sources of taxation have not been sufficient to meet this increase in the cost of municipal government, and it has heretofore been necssary to enact an earnings tax in the City of St. Louis for the maintenance of the solvency of our local government; and

"Whereas, the General Assembly of the State of Missouri has heretofore enacted enabling legislation authorizing the City of St. Louis to levy an earnings tax which has been productive of approximately $7,000,000 per year, and the authority heretofore granted by the said General Assembly expires on July 17, 1950, and that thereafter the City of St. Louis will not have authority to continue this vital source of income; and

"Whereas, the loss of the aforesaid income would necessarily result in a curtailment of City services, thus endangering the health, welfare and safety of our citizens.

"Now, Therefore, Be It Resolved, that we * * * do hereby urge the Honorable Forrest Smith, Governor of the State of Missouri, to call a special session of the General Assembly for the purpose of continuing the authorization of this City to levy an earnings tax, and we further request the members of the General Assembly of the State of Missouri to act favorably upon said proposed legislation; * * *."

The City of St. Louis is a constitutional charter city, having a population of more than 700,000 inhabitants as determined by the decennial census of 1950. Organized under Article IX, §§ 20-26, Constitution of 1875, in the dual character of both a city and county, it has the unique distinction of being the only city specifically named in the Constitution of 1945, Article VI, § 31. It is also agreed that, although possible, it is a practical certainty no other such constitutional charter city of more than 700,000 inhabitants will come into existence in Missouri during the period of time in which House Bill No. 50 is effective.

(Although not specifically named in the Constitution of 1945, Kansas City was and still is a constitutional charter city, and subsequent to the adoption of the 1945 Constitution, University City, Columbia, Springfield, and possibly others, have framed and adopted their own charters. Sec-

tion 82.010 RSMo 1949 V. A. M. S. recognizes their status in that respect along with that of the City of St. Louis.)

In its dual capacity as a city and county, the expenditures of the City of St. Louis for the fiscal year 1943-1944 amounted to $21,752,165, and its expenditures in said dual capacity in the fiscal year 1951-1952 amounted to $43,052,595. Established sources of revenue, absent an earnings tax, or an increase of other taxes, or a levy of additional taxes, are insufficient to meet the requirements of appropriations as passed by the Board of Aldermen. In the fiscal year 1951-1952 the operating deficit amounted to $3,307,138. The enabling act approved by the Governor on the 28th day of May, 1948, authorizing the City to levy a tax on earnings for the period ending July 17, 1950, and the tax levied pursuant to said act of 1948, yielded a tax during the two-year period of the existence of said ordinance amounting to $12,906,085, and during the two years said tax was in effect the City was able to operate without a deficit.

The enabling act here involved, hereinafter referred to as House Bill No. 50, became effective (unless held to be unconstitutional) on July 29, 1952. Insofar as pertinent, it provides:

§ 92.110. "Any constitutional charter city in this state which now has or may hereafter acquire a population in excess of seven hundred thousand inhabitants, according to the last federal decennial census, is hereby authorized to levy and collect, by ordinance for general revenue purposes, an earnings tax on the salaries, wages, commissions and other compensation earned by its residents; on the salaries, wages, commissions and other compensation earned by nonresidents of the city for work done or services performed or rendered in the city; on the net profits of associations, businesses or other activities conducted by residents; on the net profits of associations, businesses or other activities conducted in the city by nonresidents; and on the net profits earned by all corporations as the result of work done or services performed or rendered and business or other activities conducted in the city."

§ 92.120. Such tax shall not be in excess of one per centum per annum.

§ 92.150. "The net profits or earnings of associations, businesses or other activities, and corporations shall be ascertained and determined by deducting the necessary expenses of operation from the gross profits or earnings."

§ 92.200. The act shall expire April 1, 1954.

Appellants thus state their first contention:

"The gravamen of appellants' charge that House Bill No. 50 is unconstitutional is found in those provisions of our Constitution of 1945 prohibiting special legislation, namely, Article III, Section 40, sub-paragraphs 21 and 30, and Article X, Section 11(f). Simply stated, appellants submit that the classification of constitutional charter cities by population according to the last federal decennial census when read with the final section of the act causing it to expire April 1, 1954, six years before the next federal decennial census, makes the act applicable only to the City of St. Louis under a then existing state of facts and by its very terms fails to hold the class open so that other constitutional charter cities might come within it. This requirement that a statute be "open-ended" in order to avoid the constitutional prohibition against special legislation is well-settled in Missouri; and this fundamental requisite of a general law—its "open-endedness"—is as applicable to the City of St. Louis as to any other political subdivision in this state."

Respondents' answer to this contention is that Article VI, § 31, of the Constitution of 1945, classifying the City of St. Louis in its dual capacity of city and county and affirming its powers, organization, rights and privileges, being special in its terms, prevails over the general provisions of Article III, § 40, prohibiting the General Assembly from passing any local or special law (clause 21) regulating the affairs of counties and cities, or (clause 30) where a general law can be made applicable.

Respondents' contention fails, however, to take into consideration the provisions of Article X, § 11 (f), of the Constitution, which is as follows: "Nothing in this constitution shall prevent the enactment of any *general law* permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes." (Em-

phasis ours.) By the clear implication of that provision, legislative permission to any city or other political subdivision to enact an earnings tax ordinance can only be granted by a general law. We can attach no other meaning to it. Of course, this does not mean that a general law permitting the levy of such a tax would be local or special because it was operative only in the City of St. Louis, provided it was prospective in its terms so as to become operative in other cities as they come within the classification therein specified. State ex rel. Zoological Board of Control v. City of St. Louis, 318 Mo. 910, 1 S. W. 2d 1021, 1027; State ex rel. Carpenter v. City of St. Louis, 318 Mo. 870, 2 S. W. 2d 713, 718.

Appellants concede the law to be as above stated. They assert, however, that even though House Bill No. 50 purports in the first section thereof (92.110) to be applicable to "any constitutional charter city in this state which now has or may hereafter acquire a population in excess of seven hundred thousand inhabitants, according to the last federal decennial census * * *", yet § 92.200 fixing the expiration date of the act at April 1, 1954, is destructive of the recital in the first section and makes the act applicable only to the City of St. Louis under the existing state of facts, and thereby prevents any other constitutional charter city which hereafter may attain a population of 700,000 from the benefit of its provisions.

In support of their position they rely upon the case of Reals v. Courson, 349 Mo. 1193, 164 S. W. 2d 306. One of the grounds upon which the statute there under consideration was declared unconstitutional unquestionably supports appellants' position in the instant case. However, a reexamination of the Reals case has convinced us that although we were correct in holding the statute there involved unconstitutional upon another ground therein discussed, we erred in holding it unconstitutional upon the ground above asserted. (It perhaps should be here stated that the ground upon which we base this conclusion was not advanced in the submission of that case.)

That case involved a statute enacted in 1941. It authorized the boards of directors of school districts, formed of

cities and towns in counties having more than 200,000 inhabitants and less than 450,000 inhabitants, * * * to issue school bonds. The last section thereof provided that the act should expire January 1, 1946. St. Louis County then was the only county in the State within the range of that classification; and it was, as in the instant case, a practical certainty that no other county would come within that classification during the period in which the statute was to be effective. One of the grounds upon which we held the statute unconstitutional was that the classification therein made was unreasonable and arbitrary in that there were other counties containing school districts similarly situated to which a general law could have been made applicable. As stated, we are convinced the case was soundly ruled on that ground.

But we further said, l. c. 309: "Therefore, we have a legislative enactment classifying counties and thereby school districts so that the act can only apply to the counties —in this instance the county, which on the day of its enactment had the requisite population of more than 200,000 and less than 450,000 inhabitants. It can apply to an existing state of facts only, that is to the one county in Missouri, then falling within the classification and therefore, in fact, cannot be said to have created a future class into which other counties might fall." (Cases cited.)

The trouble with the conclusion above quoted is that it denies the well established rule of "open-endedness" to legislation pertaining to cities (or counties or other subdivisions) of a specified classification when it appears with reasonable certainty that no other city (or political subdivision) will come within the classification during the term of the legislation when the term thereof is of limited duration. To so rule would deny to the General Assembly the right to authorize for a limited period of time the City of St. Louis to enact an emergency earnings tax ordinance likewise so limited solely because its population was so far in excess of that of any other city that none would come within the classification during the emergency. We think the Constitution does not sanction such discrimination. The fact that a statute is limited as to the time of its duration does not

make it local or special so long as it applies to all within, or that may come within, the enumerated class during its effective period. State ex rel. Attorney General v. Lee, 193 Ark. 270, 99 S. W. 2d 835; 50 Am. Jur., Statutes, §§ 514, 515, p. 525. The act here under consideration does precisely that.

All of the cases cited in support of the conclusion reached in the Reals case deal with legislative acts that are to continue in perpetuity unless repealed. They are soundly ruled. It is obvious that limitation of the operation of an act that is to continue in perpetuity to a certain city or cities then comprising a specified classification without leaving it open to operate upon all cities thereafter attaining the same classification, thereby resulting in the possibility of the act becoming applicable to some one or more, but not all, of the same classification, would be to deprive the latter of its benefits. Such an act would run afoul of the rule we long since adopted in this State: "A statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special." Reals v. Courson, 349 Mo. 1193, 164 S. W. 2d 306, 307, 308, and cases cited therein.

In the instant case, we are dealing with an entirely different type of legislation: legislation of limited duration. By its terms, the enabling act here involved is operative upon any constitutional charter city in this State that now has or may hereafter acquire a population of more than 700,000 prior to its expiration date of April 1, 1954. The conceded fact that it is a practical certainty no other city in this State will attain a population of more than 700,000 prior to the expiration date of the act, April 1, 1954, does not in the least affect the situation. The act still does not exclude any city that *may* come within the classification therein made during its effective existence; to the contrary, it expressly includes any such city. It therefore applies to all cities of more than 700,000 population, whether there be one or many, so long as it is effective, and does not offend against the rule. Consequently, the Reals case should no longer be followed insofar as it is in conflict herewith. Ap-

pellants' contention of unconstitutionality of House Bill No. 50 in the foregoing respects must be overruled.

The next assignment deals with the last sentence of Article III, § 22, of the Constitution, reading: "Each committee [to which a bill has been referred] shall keep such record of its proceedings as is required by rule of the respective houses and this record and the recorded vote of the members of the committee shall be filed with all reports on bills."

Following the adoption of the Constitution, the Senate adopted a rule implementing the above provision, and which in the 66th General Assembly was designated as Rule 44, reading as follows: "Each committee shall keep a record of the total number of members present when a bill is finally considered; and this record and the record of the total number voting favorably and the total number voting unfavorably on said bill, shall be filed by the committee with its report (Constitution, Art. III, Sec. 22)." It is stipulated that the report of the Ways and Means Committee of the Senate to which House Bill No. 50 was referred was made in the same manner as the reports of the several committees of the several sessions of the 63rd, 64th, 65th and 66th General Assemblies on all bills passed at each session thereof, and that such is the procedure now followed.

The report on House Bill No. 50 showed the vote thereon as follows: "Members present: 10; Members voting aye: 9; Members voting no: 0; Members not voting: 1."

Appellants insist that the report as made is insufficient in that it does not set forth the names of the individual members and how each of them voted. In support of that contention they cite many cases in an effort to establish that the provisions of said Sec. 22 are mandatory and quote extended excerpts from the debates on this section during the Constitutional Convention in an effort to establish that the construction they place upon the meaning of § 22 is its intendment. Respondents cite cases and quote excerpts from the debates in an effort to establish the contrary of both contentions made by appellants. No good purpose would be served in a discussion of these cases or debates. This, for the reason that the provision simply does not re-

quire the recording of the vote of each of the members. This court would be going far afield in interpolating into the provision language that is not there and then declaring it mandatory. No one can say that the construction placed thereon by the Senate is not a literal compliance with its provisions. This point must be ruled against appellants.

This brings us to appellants' contention that the ordinance and House Bill No. 50 are unreasonable, discriminatory and uncertain and therefore violative of (a) the due process clause of the Constitution of Missouri, (b) the due process and equal protection of the laws clauses of the Federal Constitution, and (c) the requirement of uniformity of taxes levied upon the same class of subjects within the territorial limits of the levying authority.

Section Two of the ordinance imposes the tax of one-half of one per centum on (a) the salaries, wages, commissions and other earned compensation of individuals and on (b) the net profits of corporations, associations and businesses. "Net profits" are defined in Section One thereof as "the net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings." Section Nine thereof charges the city collector with the enforcement of the ordinance and empowers him to adopt, promulgate and enforce "rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the ordinance * * *." Pursuant thereto, he promulgated and published in pamphlet form, under date of August 28, 1952, a set of rules and regulations. In the foreword attached thereto, it is stated: "This first issue of the rules and regulations, which is flexible, is *intended as a guide* to those subject to the Earnings Tax and will be supplemented from time to time as may be necessary." (Emphasis ours.)

Among the rules so adopted was a definition of the meaning of the term "net profits". It declared, as does House Bill No. 50, "net profits" to be the net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings. It then authorized the following deductions

from gross profits or earnings in determining "net profits": (1) ordinary and necessary expenses of conducting the business; (2) all losses, including reasonable allowances for exhaustion, depreciation, obsolescence or wear and tear; (3) bad debts arising and charged off during taxable year; (4) all taxes except those for local benefits and on inheritances; (5) all interest paid within the year on taxpayer's indebtedness; and (6) charitable contributions not in excess of 5% of net income.

In launching their attack upon this phase of the ordinance, appellants assume that the rules promulgated by the collector are to be treated as a part and parcel of the ordinance. If they are to be so treated, the result is that the ordinance will become void whenever the city collector, through ignorance, excessive zeal or sheer venality, promulgates a rule that is discriminatory, vague or uncertain. While it is true that he is authorized to make rules relating to "any matter or thing pertaining to the administration and enforcement" of its provisions, certainly he is not thereby impliedly empowered to make any rule that will invalidate the ordinance.

Furthermore, this action does not seek to have the ordinance declared unconstitutional because of any administrative or enforcemental rule adopted. A careful reading of the petition fails to disclose any mention of the rules other than that the ordinance "attempts to empower the defendant collector * * * to promulgate necessary rules and regulations for the administration of the tax, and authorizing every employer collecting or remitting the tax to deduct and retain therefrom three per cent of the total amount withheld * * *." No where in the charging part or in the prayer of the petition is any complaint leveled against or relief sought on account of the rules. But appellants say the case was tried upon that theory and cite as authority for their assertion the agreed statement of facts, wherein a recital is made as to the adoption of the ordinance and promulgation of rules, and that a "copy of said ordinance and said pamphlet is hereto attached, * * * incorporated herein by reference, pursuant to which ordinance and enabling act defendant Del L. Bannister [Collector] claims

the funds withheld from the wages of plaintiffs by defendant Shapleigh Hardware Co."

We are clearly of the opinion that such a recital in the agreed statement of facts cannot inject into the case an issue that is wholly foreign to the whole theory upon which the action is predicated and pleaded.

However, we are convinced that a mere misconception, if such it be, on the part of the collector at the time he issued the first set of rules defining his idea of what constituted allowable deductions in reckoning "net profits", or a vague statement therein, whereby some advantage might accrue to a business institution or self-employed individual as against a wage earner, could not invalidate the ordinance. The rules, at most, purport to be no more than a guide. See City of Louisville v. Sebree, 308 Ky. 420, 214 S. W. 2d 248, 255; Sutherland's Statutory Construction, 3rd Ed., Vol. 2, § 2405, p. 180. For instance, it would be wholly unreasonable to declare unconstitutional a state statute because an administrative agency promulgated a discriminatory rule in attempting to enforce it. Likewise, so would it be to declare an ordinance void on the same basis.

Is the classification of those subject to the provisions of the act into two groups, to wit: (1) those in business for themselves and (2) wage earners, arbitrary and unreasonable?

Appellants concede, as they must, that a state may make such classifications even though they result in the imposition of unequal taxes on the various classes, provided the classifications are reasonably related to the ends the statute seeks to achieve, citing Caskey Baking Co. v. Commonwealth of Virginia, 313 U. S. 117, 61 S. Ct. 881, 85 L. Ed. 1223; Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362, 60 S. Ct. 968, 84 L. Ed. 1254; Madden v. Commonwealth of Kentucky, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590. They contend, however, the classification here made is unreasonable and arbitrary and, in so doing, rely strongly upon the cases of Quaker City Cab Co. v. Commonwealth of Pennsylvania, 277 U. S. 389, 48 S. Ct. 553, 72 L. Ed. 927, and City of St. Louis v. Spiegel, 75 Mo. 145.

In the Quaker City Cab case, the statute involved levied a tax upon the gross receipts of "every transportation

company, now or hereafter incorporated or organized" under the laws of any sovereignty and doing business in Pennsylvania, owning or operating any railroad or other device for the transportation of freight or passengers. The Quaker Company, a New Jersey corporation, operated a fleet of taxicabs in Pennsylvania. In so doing, it was subjected to competition by individuals and partnerships operating taxicabs. The court held the act violative of the Fourteenth Amendment, saying: "In effect section 23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed, while those of natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed." The syllabus in the Spiegel case fairly summarizes the nature of the case and its holding: "A license fee upon the keepers of meatshops is a tax, and must be uniform within the territorial limits of the authority imposing it. Const. 1875, Art. 10, § 3. A city ordinance, therefore, which requires a license fee of $100 in one part of the city and $25 in the rest, is void."

It is clear there is no analogy between the classifications in those cases and the instant case. In those cases there was patent discrimination between taxpayers of the same class, to wit: those engaged in identical occupations. Other cases cited by appellants, far too numerous to separately discuss, are found not to be in point.

In determining the reasonableness of the classification made by the ordinance here involved, certain established rules of construction are pertinent:

"Classification is not discrimination. It is enough that those in the same class are treated with equality." Caskey Baking Co. v. Commonwealth of Virginia, 313 U. S. 117, 61 S. Ct. 881, 883, 85 L. Ed. 1223. See also: State ex rel. Jones v. Nolte, 350 Mo. 271, 282, 165 S. W. 2d 632, 636; Campbell Baking Co. v. City of Harrisonville, 50 F. 2d 670, 673; City

of St. Charles ex rel. Palmer v. Schulte, 305 Mo. 124, 129, 130, 264 S. W. 654, 655, 656.

In Madden v. Commonwealth of Kentucky, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590, the court said: "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the fourteenth amendment was not intended to compel the states to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." See also Hull v. Baumann, 345 Mo. 159, 131 S. W. 2d 721, 726.

In the case of Dole v. City of Philadelphia (1940), 337 Pa. 375, 11 A. 2d 163, the Supreme Court of Pennsylvania had under consideration an ordinance similar to the ordinance here involved. That ordinance imposed a tax on (a) salaries, wages, commissions and other earned compensations, and (b) on the net profits of businesses, professions or other activities. In discussing that feature of the ordinance, the court said: "Furthermore, salaries and wages are in their nature essentially certain, and free from the speculative features inevitably attached to net profits. A business or professional man at the end of a year of industrious work may find that his efforts have produced no net income,—only a loss. In another year his net profit may be tremendous. The salaried man or wage earner

proceeds on a more even keel. He usually knows in advance of performance just how much his salary or wage will be. Also, he knows currently what he is earning, while the business or professional man generally calculates his net profit or loss on an annual basis. He has to operate and calculate on a long range basis. Many of our laws for the benefit of employees are based upon these, and other fundamental and universally recognized, differences between the earning position of an employee and that of a business or professional man depending, not on salary, but on net profits for his livelihood."

A more recent case upholding similar classification is the case of City of Louisville v. Sebree (1948), 308 Ky. 420, 214 S. W. 2d 248.

It is clear that the ordinance in the instant case deals with two distinct subjects of taxation and with two broad and distinct classes of taxpayers. One deals with "salaries, wages, commissions and other compensation", for which the individual earner is liable. The other deals with "net profits" of those in business for themselves, for which they are liable. Within each class there is no discrimination. No sound reason has been advanced to show such classification unreasonable. We hold the ordinance valid in this respect.

Finally, appellants say that the term "net profits", as defined in the ordinance, is so uncertain that the legislative intent can only be gathered from the collector's regulations. We cannot agree. Section One of the ordinance defines "net profits" as "the net income of any association, business or corporation remaining after deducting the necessary expenses of operations from the gross profits or earnings." It is substantially in the wording, and has the identical meaning, of the definition of "net profits" set forth in House Bill No. 50. The meaning is clear and definite. The problem of what consitutes "necessary expenses of operation" is, and perhaps always will be, vexing. It is a matter of common knowledge that the concept of the meaning of this phrase changes from time to time as accepted methods of accounting change. In any event, however, for the reasons hereinabove stated, the question of

whether the rules promulgated by the collector in an effort to provide a uniform method of determining "net profits" are discriminatory is not before us. Appellants' final point is therefore overruled.

The judgment of the trial court is affirmed.

All concur.

FRANK HOLLINGSWORTH,
Judge.

APPENDIX "B"

CHAPTER 92

R. S. Mo., 1949 V. A. M. S.

Taxation in St. Louis and Kansas City

92.110. *Tax May Be Levied on Earnings and Profits (St. Louis)*

Any constitutional charter city in this state which now has or may hereafter acquire a population in excess of seven hundred thousand inhabitants, according to the last federal decennial census, is hereby authorized to levy and collect, by ordinance for general revenue purposes, an earnings tax on the salaries, wages, commissions and other compensation earned by its residents; on the salaries, wages, commissions and other compensation earned by nonresidents of the city for work done or services performed or rendered in the city; on the net profits of associations, businesses or other activities conducted by residents; on the net profits of associations, businesses or other activities conducted in the city by nonresidents; and on the net profits earned by all corporations as the result of work done or services performed or rendered and business or other activities conducted in the city. Laws 1951, p. —, H. S. H. B. No. 50, Section 1.

92.120. *Tax Rate Limits (St. Louis)*

The tax on salaries, wages, commissions and other compensation or individuals, subject to tax, and on the net

profits or earnings of associations, businesses or other activities, and corporations, subject to tax, shall not be in excess of one per centum per annum. Laws 1951, p. —, H. S. H. B. No. 50, Section 4.

92.130. *Income Exempt from State Income Tax Not to Be Taxed (St. Louis)*

The income referred to in Sections 143.120 to 143.150, R. S. Mo. 1949, as not being subject to state income tax shall not be taxable under any tax ordinance enacted pursuant to the provisions of Sections 92.110 to 92.200. Laws 1951, p. —, H. S. H. B. No. 50, Section 6.

92.140. *Exemptions and Deductions from Tax May Be Authorized by City (St. Louis)*

The municipal assembly of any such city may provide for deductions and exemptions from salaries, wages and commissions of employees and may provide for exemptions on account of the wives, husbands and dependents of such employees. Laws 1951, p. —, H. S. H. B. No. 50, Section 2.

92.150. *Net Profits, How Ascertained (St. Louis)*

The net profits or earnings of associations, businesses or other activities, and corporations shall be ascertained and determined by deducting the necessary expense of operation from the gross profits or earnings. Laws 1951, p. —, H. S. H. B. No. 50, Section 1.

92.160. *Tax Ordinance to Contain Formulae for Taxing Profits of Nonresident (St. Louis)*

The earnings or net profits subject to tax of any nonresident individual, of any association or business conducted by nonresidents, or of any corporation, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the city may be ascertained by formulae set forth in any ordinance enacted pursuant to sections 92.110 to 92.200 or prescribed by rules or regulations adopted pursuant to such ordinance. Laws 1951, p. ——, H. S. H. B. No. 50, Section 5.

92.170. *Employers May be Required to Collect Tax—Allowance (St. Louis)*

Any such city is hereby authorized to impose upon employers the duty of collecting and remitting to the city any tax that may be levied upon the earnings of employees pursuant to sections 92.110 to 92.200, and to prescribe penalties for failure to perform such duty. In the event that any such city should impose such duty on employers, each such employer shall be entitled to deduct and retain three per cent of the total amount collected to compensate such employer for collection such tax. Laws 1951, p. ——, H. S. H. B., No. 50, Section 7.

92.180. *Wage Brackets May be Established (St. Louis)*

In order to facilitate the collection of the tax herein authorized, any such city may by ordinance create wage brackets within which the tax shall be uniform for taxpayers entitled to the same number of exemptions. Laws 1951, p. ——, H. S. H. B. No. 50, Section 8.

92.190. *Tax Ordinance Not to Require Copies of Federal or State Income Tax Returns (St. Louis)*

No tax ordinance enacted pursuant to the provisions of sections 92.110 to 92.200 shall require any taxpayer to file copies of his state or federal income tax returns with any city officer, employee or other person designated by said ordinance to collect or otherwise administer any tax imposed thereunder. Laws 1951, p. ——, H. S. H. B. No. 50, Section 9.

92.200. *Law to Expire, When*

The provisions of sections 92.110 to 92.200 shall expire April 1, 1954. Laws 1951, p. ——, H. S. H. B. No. 50, Section 11.

EXHIBIT "A"

Ordinance 46222

An Ordinance levying and imposing an earnings tax for general revenue purposes of one-half of one per cent on salaries, wages, commissions and other compensation earned after August 31, 1952, by residents of the City of St. Louis; on salaries, wages, commissions and other compensation earned after August 31, 1952, by non-residents of the City, for work done or services performed or rendered in the City; on the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted by a resident or residents of the City; on the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted in the City by a non-resident or non-residents; and on the net profits earned after August 31, 1952, by all corporations as a result of work done or services performed or rendered and business or other activities conducted in the City; prescribing a formula for the ascertainment of the net profits subject to tax of any corporation, or association or business conducted in whole or in part by non-residents of the City, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered, or conducted both within and without the City; authorizing any such taxpayer to file with the Collector an application for an alternative method of allocation or apportionment of the net profits reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City; prescribing a formula for the ascertainment of earnings subject to tax of any non-resident individual in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, and empowering the Collector to determine by rule or regulation a different apportionment of such earnings as are reasonably attributable to work done, or services performed or rendered in the City in cases where the services rendered are of a peculiar na-

ture, or where the basis of compensation is unusual, or for any other reason; providing for the filing of returns and payment of the tax by individuals, associations, businesses, corporations, fiduciaries, and other entities, and for the furnishing of information by such taxpayers and by employers; imposing on employers the duty of collecting the tax at the source; prescribing the duties and powers of the Collector; providing for interest and penalties on delinquencies; providing that the divulgence of confidential information or the failure, neglect, or refusal to make any return required under this ordinance, or the failure, neglect, or refusal of any employer to withhold or pay over to the City any amount of tax subject to withholding under this ordinance, or the refusal to permit authorized examinations by the Collector, or the making, knowingly, of any incomplete, false, or fraudulent return, or the attempt to do anything whatsoever, to avoid the full disclosure of the amount of earnings or profits, shall constitute a misdemeanor; providing generally for the administration and enforcement of this ordinance and the collection of the tax; empowering the Collector to promulgate necessary rules and regulations for the administration of the tax; providing that income exempt from the state income tax laws shall be exempt from taxation under the provisions of this ordinance; authorizing every employer collecting and remitting the tax to deduct and retain therefrom three per cent (3%) of the total amount withheld by such employer; containing a separability clause; repealing Article XIV of Chapter 23 of the Revised Code of the City of St. Louis, Missouri, 1948; and containing an emergency clause.

Be It Ordained by the City of St. Louis, as follows:

Section One. As used in this ordinance, the following words shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

"Association"—A partnership, limited partnership, or any other form of unincorporated business or enterprise, owned by two or more persons.

"Business"—An enterprise, activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, association, or any other entity other than a corporation.

"City"—The City of St. Louis.

"Collector"—The Collector of the Revenue of The City of St. Louis.

"Corporation"—A corporation or joint stock association organized under the laws of the United States, the State of Missouri, or any other state, territory, or foreign country or dependency.

"Employer"—An individual, association, corporation, (including a corporation not for profit) governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis, whether or not such employer is engaged in business as hereinbefore defined.

"Net Profits"—The net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings.

"Non-resident"—An individual, association, business, corporation, fiduciary or other entity domiciled outside the City.

"Person"—Every natural person, association, business or fiduciary. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term, as applied to associations, shall mean the partners thereof, and, as applied to corporations, the officers thereof.

"Resident"—An individual, association, business, corporation, fiduciary or other entity domiciled within the City.

"Taxpayer"—A person, whether an individual, association, business, corporation, fiduciary, or other entity required hereunder to file a return of earnings or net profits, or to pay a tax thereon.

Section Two. A tax for general revenue purposes of one-half of one per centum is hereby imposed on (a) salaries, wages, commissions and other compensation earned after August 31, 1952, by resident individuals of the City,

including the entire distributive share of any member of a partnership or association, less the amount thereof, if any, which may be shown to have been taxed under the provisions hereof to said association or partnership; and on (b) salaries, wages, commissions and other compensation earned after August 31, 1952, by non-resident individuals of the City, for work done or services performed or rendered in the City; and on (c) the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted by a resident or residents, and on (d) the net profits earned after August 31, 1952, of associations, businesses, or other activities conducted in the City by a non-resident or non-residents; and (e) on the net profits earned after August 31, 1952, by all corporations as a result of work done or services performed or rendered, and business or other activities conducted in the City.

Said tax shall first be levied, collected and paid with respect to that portion of salaries, wages, commissions, other compensation and net profits earned after August 31, 1952, and prior to January 1, 1953, and thereafter said tax shall be levied, collected and paid on the basis of the calendar year; provided, however, that where the fiscal year of any person, association, business or corporation differs from the calendar year, the tax shall first be applied to that portion of the net profits for the fiscal year as shall be earned after August 31, 1952, and thereafter on the fiscal year basis.

Section Three. The net profits subject to tax of any corporation, or of any association or business conducted in whole or in part by non-residents of the City, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, shall be ascertained as follows, to-wit:

(a) If such taxpayer shall keep its books and records in such a manner as to show the portion of its net profits which is reasonably attributable to work done, services performed or rendered, and business or other activity conducted in the City, then such portion of said net profits shall be subject to said tax.

(b) If the books and records of such taxpayer are not kept in such a manner so as to show the portion of its net profits which is reasonably attributable to work done, services performed or rendered, and business or other activity conducted in the City, then the portion of the entire net profits of such taxpayer subject to tax shall be ascertained by multiplying said entire net profits by an allocation percentage which shall be determined as follows, to-wit:

(1) The percentage which the average value of such taxpayer's real and tangible personal property within the City during the period covered by its return bears to the average value of all its real and tangible personal property wherever situated during such period shall first be ascertained.

(2) The percentage which the gross receipts of such taxpayer derived from business within the City during the period covered by its return bear to the total of such gross receipts wherever derived, shall then be ascertained. Gross receipts derived from business within the City shall be the amount of gross receipts from (a) sales (including also sales of services), except those negotiated or effected in behalf of such taxpayer by agents or agencies, chiefly situated at, connected with, or sent out from premises for the transaction of business owned or rented by such taxpayer outside the City, and (b) rentals or royalties from property situated, or from the use of patents, within the City.

(3) The percentage which the total wages, salaries and other personal service compensation during the period covered by its return, of its employees within the City, except general executive officers, bears to the total wages, salaries and other personal service compensation during such period of all of such taxpayer's employees within and without the City, except general executive officers, shall then be ascertained.

(4) The percentages determined in accordance with subparagraphs 1, 2 and 3 above, or such of the aforesaid paragraphs as shall be applicable to the particular taxpayer's business, shall be added together and the total so obtained shall be divided by the number of percentages used in arriving at said total. The result so obtained shall be the allocation percentage.

(c) If any such taxpayer believes that the methods of allocation or apportionment hereinbefore prescribed have operated or will so operate as to subject it to taxation on a greater portion of its net profits than is reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City, it shall be entitled to file with the Collector a statement of its objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances and in such manner and with such detail and proof and within such time as the Collector may reasonably prescribe; and thereupon if the Collector shall conclude that the methods of allocation or apportionment hereinabove provided are in fact inapplicable or inequitable, he shall redetermine the net profits subject to tax by such other method of allocation or apportionment as seems best calculated to assign to the City for taxation the portion of the net profits reasonably attributable to work done, services performed or rendered, and business or other activities conducted in the City, not exceeding, however, the amount which would be arrived at by the application of the methods of allocation or apportionment hereinabove provided.

Section Four. The earnings subject to tax of any nonresident individual, in any case in which the work done, services performed or rendered, and business or other activities conducted are done, performed, rendered or conducted both within and without the City, shall be ascertained as follows, to-wit:

(a) If the amount of such earnings depends on the volume of business transacted by such individual, then the portion of such earnings subject to tax shall be the portion of such earnings which the volume of business transacted by such individual in the City bears to the volume of business transacted by him within and without the City.

(b) In all other cases, the portion of such earnings subject to tax shall be the portion of such earnings which the total number of working days employed within the City bears to the total number of working days within and without the City.

(c) If it is impracticable to apportion such earnings as aforesaid either because of the peculiar nature of the services of such individual, or on account of the unusual basis of compensation, or for any other reason, then the amount of such earnings reasonably attributable to work done, or services performed or rendered, in the City, shall be determined in accordance with rules or regulations adopted or promulgated by the Collector for the purpose.

Section Five. Except as hereafter provided each individual, association, business, corporation, fiduciary, or other entity, whose earnings or profits are subject to the tax imposed by this ordinance shall, on or before March 30th of each year, unless an extension is granted by the Collector, make and file with the Collector a return, on a form obtainable from the Collector, setting forth the aggregate amount of salaries, wages, commissions, compensation or net profits earned by such taxpayer during the preceding calendar year and subject to the said tax, together with such other pertinent information as the Collector may require:

Provided, however, that where the return is made for a fiscal year different from a calendar year, the said return shall be made within ninety days from the end of the fiscal year, unless an extension is granted by the Collector. Such return shall also show the amount of the tax imposed by this ordinance on such earnings and profits. The taxpayer making the said return shall, at the time of filing thereof, pay to the said Collector the amount of tax shown as due thereon:

Provided, however, that where any portion of the tax so due shall have been deducted at the source and shall have been paid to the Collector by the employer making the said deduction, credit for the amount so paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of the filing of said return:

Provided, further, that no return shall be required of any taxpayer who has received only wages, salaries, commissions or other compensation and from which the tax has been withheld at the source, as hereinafter provided. The failure of any employer or any taxpayer to receive or pro-

cure a return form shall not excuse such employer or taxpayer from making a return or paying the tax due.

Section Six. Every employer within the City who employs one or more persons on a salary, wage, commission, or other compensation basis, shall deduct at the time of the payment thereof, the tax of one-half of one per centum of salaries, wages, commissions or other compensation due by the said employer to the said employee and subject to tax, and shall make his return monthly and pay to the said Collector, not later than the last day of each month, the amount of taxes so deducted for the calendar month next preceding the month in which the return is required to be filed. Said return shall be on a form or forms obtainable from the Collector and shall be subject to the rules and regulations prescribed therefor by the said Collector. Every such employer shall furnish each employee with a statement of the amount of the tax withheld. The failure of any employer to deduct or withhold at the source the amount of the tax due from the employee shall not relieve the employee from the duty of making a return and paying the tax.

Section Seven. Every employer collecting and remitting the tax herein provided for on any resident or non-resident employee shall be entitled to deduct and retain three per centum of the total amount so collected as compensation to the employer for collecting and remitting the tax.

Section Eight. The income referred to in Sections 143.120 to 143.150, R. S. Mo. 1949, as not being subject to the state income tax shall not be taxable under this ordinance.

Section Nine. It shall be the duty of the Collector to collect and receive the tax imposed by this ordinance. In addition to keeping the records now required by law and paying over the proceeds from the collection of taxes to the treasurer of the City, as now provided by law, the Collector shall keep an accurate and separate account of all such tax payments received by him, showing the name and address of the taxpayer and the date of the payments. The Collector is hereby charged with the enforcement of the provisions of this ordinance and is hereby empowered to adopt and

promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment or underpayment is claimed or found to have occurred.

The Collector or any agent or employee authorized in writing by him is hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any taxpayer or supposed taxpayer, in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this ordinance. Every such employer or supposed employer, or taxpayer or supposed taxpayer, is hereby directed and required to give to the said Collector or his duly authorized agent or employee the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

The Collector is hereby authorized to examine any person concerning any income which was or should have been returned for taxation and to this end may order the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income. The refusal of such examination by any employer or taxpayer shall be deemed a violation of this ordinance. Any information obtained as a result of any return, investigation, hearing or verification required or authorized by this ordinance, shall be confidential except for official purposes and except in accordance with judicial order. Any person otherwise divulging such information shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or imprisonment for not more than six (6) months or both such fine and imprisonment for each offense.

Section Ten. All taxes imposed by this ordinance and remaining unpaid after they have become due shall bear interest at the rate of six per cent (6%) per annum, and the delinquent taxpayer shall be liable for said tax and interest, and, in addition thereto, to a penalty of one per cent (1%)

of the amount of the unpaid tax for each month or fraction of a month for the first six (6) months of delinquency.

Section Eleven. All taxes imposed by this ordinance, together with all interest and penalties, shall be recoverable by the City as other debts of like amounts are recoverable.

Section Twelve. Any person or taxpayer who shall fail, neglect, or refuse to make any return required by this ordinance, or any employer who shall fail, neglect or refuse to withhold or pay over to the City any amount of tax subject to withholding hereunder, or any person or taxpayer who shall refuse to permit the Collector, or his duly authorized deputy or agent, to examine his books, records, or papers, or who shall knowingly make an incomplete, false, or fraudulent return, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of earnings or profits, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or to imprisonment for not more than six (6) months, or to both such fine and imprisonment.

Section Thirteen. If any sentence, clause or section or any part of this ordinance is for any reason held to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared to be the intent of the Board of Aldermen that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

Section Fourteen. Article XIV of Chapter 23 of the Revised Code of the City of St. Louis, Missouri, 1948, is hereby repealed.

Section Fifteen. This being an ordinance fixing a tax rate, an emergency is hereby declared to exist within the meaning of Section 20 of Article IV of this Charter of the City of St. Louis, and this ordinance shall be effective immediately upon its passage and approval by the Mayor.

Approved: August 28, 1952.

RULES AND REGULATIONS

2. DEFINITIONS

1. Wages shall include salaries, wages, commissions, and other compensation for personal services.

Wages, when not paid for in money, will be measured by the fair market value of the merchandise, stock, bonds, room or board, or other considerations given to the employee.

2. Net Profits. The net income of any association, business or corporation remaining after deducting the necessary expenses of operation from the gross profits or earnings.

1. All of the ordinary and necessary expenses incurred to produce said income, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the taxpayer has not taken or is not taking title, or in which the taxpayer has no equity;

2. All losses, actually sustained in said business, including a reasonable allowance for exhaustion, depreciation, obsolescence, or wear and tear of property in said business;

3. Debts arising from said business actually ascertained to be worthless and charged off within the year;

4. All taxes paid within the year imposed by authority of the United States or its territories or possessions, or under authority of any state, county, school district or municipality or other taxing subdivision of any state, not including those assessed against local benefits and inheritance taxes.

5. All interest paid within the year on taxpayer's indebtedness.

6. Contributions or gifts made by the taxpayer within the taxable year to corporations, associations and societies organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children and animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of 5 per centum of the amount of the taxpayer's net income on which tax is paid.